

R & S SEAFOOD, INC.,)
)
 Plaintiff)
)
 v.) *Civil No. 90-0141 P*
)
 F/V WALTER LEEMAN, SR.,)
 et al.,)
)
 Defendants)

In this action, the plaintiff seeks to recover the balance allegedly owing on the furnishing of bait to the defendant fishing vessel and the individual defendant on or about May 30, 1985. The defendants have answered and now move to dismiss for failure to state a claim upon which relief can be granted. Specifically, they assert that the plaintiff's action is barred by the four-year statute of limitations applicable to a sale of goods under the Maine Uniform Commercial Code ("UCC"). See 11 M.R.S.A. § 2-725.

¹ The defendants assert laches as an affirmative defense in their answer but not in the instant motion to dismiss. I intimate no opinion on the merits of a laches defense.

lien law governing necessities is deemed to supersede any state statute conferring a lien on a vessel to the extent the same grants a right of action against the vessel for necessities. *See* 46 U.S.C. ' 31307. Hence, it is inconceivable that Maine's limitation statute affecting the sale of goods under the UCC could be said to control the disposition here. *Cf. Butler v. American Trawler Co.*, 887 F.2d 20 (1st Cir. 1989) (ship passenger's claim for injuries sustained while attempting to board docked ship governed by maritime law's three-year statute of limitations; before enactment of same, admiralty doctrine of laches, not state law, controlled timeliness of maritime personal injury actions).

For the foregoing reasons, I recommend that the defendants' motion to dismiss be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 4th day of February, 1991.

David M. Cohen
United States Magistrate Judge